

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**BENJAMIN CAREATHERS, individually and
on behalf of all others similarly situated,**

Plaintiff,

vs.

**RED BULL NORTH AMERICA, INC., a
California corporation,**

Defendant.

Case No. 1:13-CV-0369 (KFP)

**DAVID WOLF and MIGUEL ALMARAZ,
individually and on behalf of others similarly
situated,**

Plaintiffs,

v.

**RED BULL GMBH, a foreign company; RED
BULL NORTH AMERICA, INC., a
California corporation; and RED BULL
DISTRIBUTION COMPANY, INC., a
Delaware corporation,**

Defendants.

Case No. 1:13-CV-08008

**OBJECTOR/APPELLANT PAUL J. LOPEZ’S SUR-REPLY
IN OPPOSITION TO PLAINTIFFS’ MOTION FOR APPEAL BOND**

Paul J. Lopez, Appellant and Objector herein, files this Sur-Reply in Opposition (the “Sur-Reply”) to Plaintiffs’ Reply Memorandum (Dkt. No. 119) filed on August 12, 2015.

SUR-REPLY

Legal research has uncovered no appellate cases that have allowed costs of administrative delay in a class action settlement to be included in a Rule 7 cost bond and plaintiffs have cited none. In December of 2014, in *Tennille v. Western Union Co.*, 774 F.3d 1249 (10th Cir. 2014), the Tenth Circuit surveyed the various federal courts of appeal on the question of whether a Rule 7 cost bond may include damages due to the delay that objectors' appeals might cause. The court observed that:

Although Plaintiffs can point to several unreported district court cases imposing appeal bonds that cover delay damages or increased administrative costs to maintain a class settlement pending appeal, we do not find the reasoning of those cases persuasive in light of the unanimous circuit authority restricting an appeal bond to costs expressly permitted by rule or statute.

Id. at 1256 (citing cases including *Adsani v. Miller*, 139 F.3d 67 (2d Cir. 1998)). This Court's sister courts hold the same. See *In re AOL Time Warner, Inc.*, 2007 WL 2741033, at *4 (Sept. 20, 2007; see also *In re Currency Conversion Fee Antitrust Litig.*, 2010 WL 1253741, at *3 (S.D.N.Y. Mar. 5, 2010). There is no rule or statute that ***expressly permits*** a district court to impose damages against objectors as costs due to delays in administering a settlement while an appeal is pending. The circuit courts of appeal are unanimous on this issue. The appeal bond should be limited to no more than \$5,000, and Mr. Lopez does not oppose a Rule 7 appeal bond in that amount.

CONCLUSION

Mr. Lopez respectfully requests that, to the extent the Court orders a bond in this case, the bond should not exceed \$5,000. The request for a \$75,000 appeal bond should be denied.

Dated: August 19, 2015.

/s/David Stein

David Stein

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Certificate of Service

I hereby certify that on August 19, 2015, I caused one true and correct copy of the foregoing Objection to be served via ECF and First Class Mail postage prepaid upon the following parties:

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